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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RICKY B PAUGH,

12 Petitioner,

13 vs.

14 GEORGE A. NEOTTI,

15 Respondent.
16

CASE NO. 09-CV-490 JLS (JMA)

**ORDER: (1) ADOPTING REPORT
AND RECOMMENDATION, (2)
DENYING PETITION FOR WRIT
OF HABEAS CORPUS, AND (3)
DENYING CERTIFICATE OF
APPEALABILITY**

(Doc. No. 15)

17 Presently before the Court is Petitioner Ricky B. Paugh's petition for a writ of habeas corpus
18 pursuant to 28 U.S.C. § 2254 and Magistrate Judge Jan M. Adler's Report and Recommendation
19 ("R&R") advising this Court to deny the petition. (Doc. Nos. 1 & 14.)

20 Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1) set forth the
21 duties of a district court in connection with a magistrate judge's report and recommendation. "The
22 district court must make a *de novo* determination of those portions of the report . . . to which objection
23 is made," and "may accept, reject, or modify, in whole or in part, the findings or recommendations
24 made by the magistrate." 28 U.S.C. 636(b)(1)(c); *see also United States v. Remsing*, 874 F.2d 614,
25 617 (9th Cir. 1989); *United States v. Raddatz*, 447 U.S. 667, 676 (1980). However, in the absence of
26 timely objection, the Court need "only satisfy itself that there is no clear error on the face of the
27 record." Fed. R. Civ. P. 72, Advisory Committee Notes (1983) (citing *Campbell v. U.S. Dist. Court*,
28 501 F.2d 196, 206 (9th Cir. 1974)).

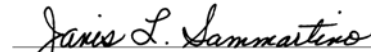
1 In this case, Petitioner has failed to timely file objections to Magistrate Judge Adler's R&R.
 2 Having reviewed the R&R, the Court finds that it is thorough, well reasoned, and no contains no clear
 3 error. Therefore, the Court **ADOPTS** the R&R in full and **DENIES** the petition **WITH**
 4 **PREJUDICE**.

5 Finally, this Court is under an obligation to determine whether a certificate of appealability
 6 should issue in this matter. A certificate of appealability is authorized "if the applicant has made a
 7 substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner
 8 satisfies this standard by demonstrating that jurists of reason could disagree with the district court's
 9 resolution of his constitutional claims or that jurists could conclude the issues presented are adequate
 10 to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see*
 11 *also Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court must either (1) grant the certificate of
 12 appealability indicating which issues satisfy the required showing or (2) state why a certificate should
 13 not issue. Fed. R. App. P. 22(b).

14 This petition raised one legal issue: whether the Petitioner's trial counsel was ineffective. He
 15 argues that she was ineffective for not telling him that the trial court could impose a greater sentence
 16 than the one indicated at the time of his plea and that she was ineffective for failing to advise him that
 17 his guilty plea could be withdrawn following the imposition of the greater sentence. These legal
 18 questions do not merit a certificate of appealability. Reasonable jurists would agree that the California
 19 Court of Appeal's denial of Petitioner's claim was neither contrary to nor an unreasonable application
 20 of clearly established federal law. Accordingly, no certificate of appealability should issue.

21 IT IS SO ORDERED.

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 23 DATED: May 17, 2010

24 
 25 Honorable Janis L. Sammartino
 26 United States District Judge
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